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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,570	01/15/2004	Frantz Germain	0267-1911	4528

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EXAMINER	
HOANG, ANN THI	
ART UNIT	**PAPER NUMBER**
2836	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/757,570	GERMAIN ET AL.	
	Examiner	Art Unit	
	Ann T. Hoang	2836	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-10 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 09 September 2004 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 7/22/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by DiSalvo et al. (US 6,246,558).

Regarding claim 1, DiSalvo et al. recites all the elements of claim 1 in claim 1 of the '558 patent, with the exception of switch means disposed within said housing for activating said circuit interrupting portion. See 11:62-67 and 12:1-18. Although a switch means is not explicitly provided in claim 1 of the '558 patent, DiSalvo et al. teaches switch means (52, 54, 56) disposed within said housing for activating said circuit interrupting portion. See Fig. 2, 6:36-67, 7:1-2, 8:25-57, and 11:47-53.

Regarding claim 6, DiSalvo et al. recites all the elements of claim 1 in claim 1 of the '558 patent, with the exception of switch means for activating said circuit interrupting portion. See 11:62-67 and 12:1-24. Although a switch means is not explicitly provided in claim 1 of the '558 patent, DiSalvo et al. teaches switch means (26, 52, 54, 56) for activating said circuit interrupting portion. See Fig. 2, 6:36-67, 7:1-2, 8:25-57, and 11:47-53.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 2-4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiSalvo et al. (US 6,246,558) in view of Halbeck (4,002,951).

Regarding claim 2, DiSalvo et al. does not disclose that the switch means is operated by a prong of a plug.

However, Halbeck discloses a circuit interrupting device comprising a switch means (50) for activating a circuit interrupting portion (10), wherein the switch means (50) is operated by a prong (28) of a plug (26) so that the circuit interrupting device automatically tests the operation of the system upon connector plug insertion. See abstract, Fig. 1, 2:32-52, and 3:8-21. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the switch means of DiSalvo et al. operated by a prong of a plug, as disclosed by Halbeck, in order to enable the circuit interrupting device to automatically test the operation of the system upon connector plug insertion.

Regarding claim 3, DiSalvo et al. does not disclose that the switch means is operated by a plug being inserted into a receptacle in the housing.

However, Halbeck discloses a circuit interrupting device comprising a switch means (50) for activating a circuit interrupting portion (10), wherein the switch means

(50) is operated by a plug (26) being inserted into a receptacle (2) so that the circuit interrupting device automatically tests the operation of the system upon connector plug insertion. See abstract, Fig. 1, 2:32-52, and 3:8-21. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the switch means of DiSalvo et al. operated by a plug being inserted into a receptacle, as disclosed by Halbeck, in order to enable the circuit interrupting device to automatically test the operation of the system upon connector plug insertion.

Regarding claim 4, neither DiSalvo et al. nor Halbeck disclose that the face of the housing is devoid of a test, trip or reset button. DiSalvo et al. discloses test and reset buttons (26, 30) on the face (16) of the housing (12) of the circuit interrupting device. See Fig. 1. Halbeck discloses a reset button (78) on the face (70) of a housing of the circuit interrupting device. See Fig. 2.

However, it would have been obvious to one of prior art at the time of the invention to omit elements of which the function was not desired, that is omit test and reset buttons of which the function was not desired, in order to simplify the design of the circuit interrupting device, save parts or reduce costs.

Regarding claims 7-9, claims 7-9 correspond to claims 2-4, respectively, and are rejected under the same reasoning as that of claims 2-4. See above rejections.

5. Claims 4, 5, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiSalvo et al. (US 6,246,558) in view of Germain et al. (US 2002/0067582).

Regarding claim 4, DiSalvo et al. does not disclose that the face of the housing is devoid of a test, trip or reset button.

However, Germain et al. discloses a circuit interrupting device, wherein the face of a housing of the circuit interrupting device is devoid of a test, trip, or reset button. See Fig. 41. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the face of the housing of the circuit interrupting device of DiSalvo et al. devoid of a test, trip or reset button, as disclosed by Germain et al., in order to discourage tampering of the circuit interrupting device by inexperienced users, i.e. children.

Regarding claim 5, Germain et al. discloses that the face of a housing of the circuit interrupting device is coupled to operate a switch means. See Fig. 41; page 3, paragraph 56; and page 8, paragraph 105. It would have been obvious to one of ordinary skill in the art at the time of the invention to couple the face of the housing of the circuit interrupting device of DiSalvo et al. to operate the switch means, as disclosed by Germain et al., in order to provide a discreet means for manually activating the circuit interrupting portion.

Regarding claims 9 and 10, claims 9 and 10 correspond to claims 4 and 5, respectively, and are rejected under the same reasoning as that of claims 4 and 5. See above rejections.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4 and 1, respectively, of U.S. Patent No. 6,246,558. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4 and 1 of the patent recite all the features of claims 1 and 6 of the application, except switch means for activating said circuit interrupting portion. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a switch means for activating said circuit interrupting portion in order to provide a means for initiating tripping of the circuit interrupting device, and since it is well known and expedient in the art to do so. For instance, the '558 patent teaches a switch means (26, 52, 54, 56) for activating an circuit interrupting portion. See Fig. 2, 6:36-67, 7:1-2, 8:25-57, and 11:47-53. Additionally, while claims 4 and 1 of the patent recite features additional to that of claims 1 and 6 of the application, it would have been obvious to one of prior art at the time of the invention to omit elements of which the function was not desired.

8. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 6,437,953. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

9. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 22 of U.S. Patent No. 6,734,769. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

10. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 18 of U.S. Patent No. 6,949,994. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

11. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,963,260. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

12. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,982,856. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

13. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 16 of U.S. Patent No.

7,026,895. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

14. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,031,125. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

15. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,042,688. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

16. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 7,049,910. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

17. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 27 of allowed Application No. 11/087,315. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

18. Claims 1 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of allowed Application No. 11/268,127. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

19. Claims 1 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/812,601. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

20. Claims 1 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 19 of copending Application No. 11/184,649. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

21. Claims 1 and 6 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 23 of copending Application No. 11/236,182. This rejection is based on the same reasoning as that of the double patenting rejection using the '558 reference above. See above rejection.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann T. Hoang, whose telephone number is 571-272-

2724. The examiner can normally be reached Mondays through Fridays, 8:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus, can be reached at 571-272-2800 x36. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ATH
24 July 2006

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